

REMARKS

Applicant's attorney wishes to thank the Examiner for the careful consideration given to this case. The indication of allowance of claims 11 and 12 is acknowledged and appreciated. However, upon consideration of the following, it is believed that the Examiner will agree that applicant is also entitled to the broader protection defined in claims 1 - 10.

The present invention is directed to a theme calendar comprising marker elements removably mountable at date locations and target locations on substrate support means. A pictorial design including a plurality of the target locations is also carried on the substrate support means. The marker elements include design features that are visible from the front of the calendar when the marker element is mounted to the substrate support means at the target locations. In this manner, movement of the marker elements from the date locations to the target locations reveals a first text message at the date locations and completes or modifies the pictorial design or forms a second text message at the target locations.

Claim 1 has been amended to specifically recite that the marker elements are movable from the date locations "and mountable" to the associated target locations. The claim has also been amended to confirm that the marker

elements are visible from the front of the calendar when mounted at the target locations. The amendments merely specifically recite what was implicit from the prior claim language and clearly disclosed in the specification.

The elements of the present invention are defined with reference to their functional features as they are moved between the date and target locations. In the context of the invention, such definitions are proper and recognized within the applicable case law and confirmed in MPEP Section 2173.05(g). As noted, there is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. *In re Swinehart*, 439 F.2d. 210, 169 USPQ 226 (CCPA 1971). Claims directed to cooperative elements in the nature of a kit or to the multi-component theme calendar herein are particularly suited to the use of functional recitations within the court's decision in *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976).

It is requested that the Examiner reconsider and withdraw the rejection of claims 1 - 10 as unpatentable under 35 USC 103(a) over US patent 5,799,423 to Malino in view of US patent 4,975,061 to Avrill. As discussed below, even if it is assumed there is motivation for combining the references and modifying Malino, Avrill

provides no teaching that would suggest modification of Malino to meet the claimed invention.

Malino discloses a perpetual calendar having date locations 28 and marker elements 32. Malino is primarily concerned with the magnetic substrate construction. As acknowledged by the Examiner, Malino does not teach a target location for the markers when they are not on the date locations.

Avrill teaches an opaque storage pocket 13 for the markers 14 when they are removed from the date locations. The combined teachings do not therefore result in the claimed invention since there is no teaching or suggestion of the following claim limitations:

a pictorial design carried on said substrate support means ... including a plurality of target locations for removably mounting an associated one of said marker elements,

each of said marker elements including design features that are visible from the front of said theme calendar when said marker element is mounted to said substrate support means at said target location, and

movement of said marker elements ... to said target locations ... completing or modifying said pictorial design or forming a second text message at said target locations.

Avrill does not disclose a pictorial design including a plurality of target locations, marker elements including design features that are visible from the front of the calendar when the marker element is mounted at the target location or that movement of the marker elements completes or modifies the pictorial design or forms a second text message at the target locations.

The Avrill opaque storage pocket 13 receives the marker elements 14 when they are moved from the date locations. The Avrill marker elements are not visible at the target location from the front of the calendar, but are hidden from view within the opaque storage pocket 13, and they do not complete or modify the pictorial design or form a second text message at the target locations.

For all of the foregoing reasons, it is respectfully submitted that claims 1-12 presently record are in condition for final allowance such action is requested.

If there are any fees required by this communication, please charge the same to Deposit Account No. 16-0820, Order No. 35023US1.

Respectfully submitted,

By: 
Joseph J. Corso, Reg. No. 25845

1801 East Ninth Street
Suite 1200
Cleveland, Ohio 44114-3108
(216) 579-1700

March 21, 2005